

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BILLY RAY,

Plaintiff,

v.

ANNE L. PRECYTHE, et al.,

Defendants.

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No. 4:24-CV-01211 RHH

MEMORANDUM AND ORDER

This matter is before the Court for review pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Review of the record indicates that Defendants Amber McCloud, Unknown Conley, Daniel Rector and Unknown Smith have not been served with process.

Plaintiff Billy Ray commenced this action as a pauper, pursuant to 28 U.S.C. § 1915, on September 4, 2024. [ECF No. 1]. The Court reviewed the complaint for frivolousness, maliciousness and failure to state a claim on December 6, 2024. [ECF No. 8]. On that date, the Court directed the Clerk to serve process on the complaint as to Defendants Amber McCloud, Unknown Conley, Daniel Rector and Unknown Smith, all alleged employees of the Missouri Department of Corrections (MDOC) at the Eastern Reception Diagnostic and Correctional Center (ERDCC) during the pertinent time period alleged in the complaint. *See id.* Process was attempted through a waiver agreement this Court maintains with the Missouri Attorney General's Office. Nonetheless, on December 20, 2024, the Court received a letter from legal counsel for the Missouri Department of Corrections, stating that they were unable to waive service for Defendants Amber McCloud, Unknown Smith or Unknown Conley as "they [were] unable to be identified as current or former employees based on the information provided." [ECF No. 11]. Furthermore, MDOC was

unable to waive process for Defendant Daniel Rector, because the only Daniel Rector employed by MDOC worked at Farmington Correctional Center in January of 2023. *See id.*

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

In cases where a self-represented litigant is proceeding *in forma pauperis*, “[t]he officers of the court shall issue and serve all process.” 28 U.S.C. § 1915(d). This provision is compulsory. *Moore v. Jackson*, 123 F.3d 1082, 1085 (8th Cir. 1997) (citing *Mallard v. United States Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 302 (1989)). As such, a litigant proceeding *in forma pauperis* is entitled to rely on service by the United States Marshals Service. *Wright v. First Student, Inc.*, 710 F.3d 782, 783 (8th Cir. 2013). However, it is a plaintiff’s responsibility to provide the information necessary for service on the defendants. *See Lee v. Armontrout*, 991 F.2d 487, 489 (8th Cir. 1993); *see also Beyer v. Pulaski Cnty. Jail*, 589 Fed. Appx. 798, 799 (8th Cir. 2014) (stating that “a plaintiff bears the burden of providing proper service information”).

In the case at bar, it has been more than 90 days since Plaintiff filed his complaint naming Amber McCloud, Unknown Conley, Daniel Rector and Unknown Smith as Defendants. As noted above, Rule 4(m) of the Federal Rules of Civil Procedure provides that the Court, after notice to a plaintiff, shall dismiss an action against any defendant upon whom service has not been timely made. Considering Plaintiff’s status as a self-represented and *in forma pauperis* litigant, he will be given the opportunity to provide the Court with adequate information such that Defendants may be identified and served under Rule 4(m). Specifically, Plaintiff shall provide full names for


Defendants (first and last) or indicate if one of the Defendant's names has been misspelled. Plaintiff's response to this Court is due no later than thirty (30) days from the date of this Order.

Accordingly,

IT IS HEREBY ORDERED that, no later than **thirty (30) days** from the date of this Order, Plaintiff shall provide the Court with adequate information such that Defendants Amber McCloud, Unknown Conley, Daniel Rector and Unknown Smith may be served with process. To the extent Plaintiff knows Defendants' first and last names, he must provide the names so that Defendants may be served with process. If one of Defendants' first or last names is misspelled, Plaintiff must notify the Court immediately.

IT IS FURTHER ORDERED that, in the absence of good cause shown, Plaintiff's failure to timely respond to this Order shall result in the dismissal of Defendants from this action, without prejudice or further notice from the Court, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Dated this 3rd day of January, 2025.



RODNEY H. HOLMES
UNITED STATES MAGISTRATE JUDGE